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SPROUT RETAIL, INC., **Plaintiff,** **v.** **USCONNECT LLC,** **Defendant.**	**UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY** **C.A. No. 3:17-cv-00135-PGS-DEA** **DEFENDANT USCONNECT LLC'S MOTION TO DISMISS PLAINTIFF SPROUT RETAIL, INC'S AMENDED SECOND-FILED COMPLAINT OR IN THE ALTERNATIVE TO STAY THIS ACTION**

PLEASE TAKE NOTICE that Womble Carlyle Sandridge & Rice, LLP, attorneys for Defendant USConnect, LLC ("Defendant"), pursuant to FED. R. CIV. P. 12(b)(2), 13, and the Court's inherent authority, do hereby move the Court to dismiss Plaintiff Sprout Retail, Inc.'s complaint in the above-captioned action, or alternatively to stay this action pending full adjudication, including the resolution of any appeals, and the entry of final judgment in the NC Action which is pending in the North Carolina Business Court, with such hearing of Defendant's motion to be held on March 20, 2017, or as soon thereafter as counsel may be heard.

In support thereof, Defendant submits to the Court this Motion, a Memorandum of Law and the exhibits filed contemporaneously herewith, and shows as follows:

1. Under the first-filed rule, Plaintiff's complaint is subject to dismissal in favor of the first-filed action previously initiated in the North Carolina Business Court ("NC Action"). The facts and claims of Plaintiff's complaint in this case are substantially identical to the

corresponding facts and claims alleged in the NC Action. Under the first-filed rule, the present case should either be dismissed without prejudice or stayed pending the determination of the claims in the NC Action.

2. Plaintiff's claims against USConnect in the above-captioned action arise from the "same transaction or occurrence" – namely the alleged breach of contract and misappropriation of trade secrets arising from the parties' relationship under an April 1, 2013 service agreement, as well as the same issues of ownership and use related to the parties' computer software and internet technology business assets. Accordingly, and pursuant to FED. R. CIV. P. 13(a), all of Sprout's claims in the NJ Action are compulsory counterclaims that Sprout was required to assert in the NC Action, and if not asserted in that action are then subject to dismissal with prejudice.

3. Sprout's claims in this case must also be dismissed for lack of personal jurisdiction. USConnect has no meaningful presence in, nor sufficient minimum contacts with, the state of New Jersey sufficient to support the imposition of personal jurisdiction in this State.

Further argument and authorities in support of the foregoing are filed contemporaneously herewith in Defendant's memorandum of law in support of this motion.

As a result of the foregoing, Defendant respectfully requests that the Court dismiss all counts in Plaintiff's Complaint against Defendant, or alternatively, stay this action pending full adjudication, including the resolution of any appeals, and the entry of final judgment in the NC Action which is pending in the North Carolina Business Court.

Dated: February 15, 2017

WOMBLE CARLYLE SANDRIDGE & RICE, LLP

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CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of February, 2017, the foregoing Motion to Dismiss Plaintiff Sprout Retail, Inc's Amended Second-Filed Complaint Or In The Alternative To Stay This Action was electronically filed *via* the Court's CM/ECF system, which delivered a true and correct copy of the filed document on the party listed below:

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